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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,333	04/22/2005	Thomas Lich	10191/3768	9141
26646	7590	06/24/2010	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				GOODEN JR, BARRY J
ART UNIT		PAPER NUMBER		
3616				
MAIL DATE		DELIVERY MODE		
06/24/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/532,333	LICH, THOMAS	
	Examiner	Art Unit	
	Barry J. Gooden Jr.	3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 19 March 2010.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 10-25 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 10-13 and 17-21 is/are rejected.
 7) Claim(s) 14-16 and 22-25 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 22 April 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. In view of the Appeal Brief filed on March 19, 2010, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Paul N. Dickson/
Supervisory Patent Examiner, Art Unit 3616

Claim Objections

2. Claims objected to because of the following informalities:

In line 1 of claims 11, 13, 14, 18 and 20-25, "the vertical distance" should be replaced with "the at least one vertical distance".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claims 18-21, claim 18 recites "wherein the vertical distance measuring device is situated on a rear bumper" which contradicts a limitation in claim 1, "situated on a vehicle front". Should the applicant be attempting to claim a second vertical distance measuring device in addition to the at least one located on the front there should be proper antecedent basis for a second device provided prior to the locating of the second device on a rear of the vehicle.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 10, 13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Farcinade, US Patent 4,180,322.

In regards to claims 10, 13 and 17, Farcinade discloses all of the claimed limitations including a device for detecting an obstacle underride, comprising:

at least one vertical distance measuring device situated on a vehicle front and aligned vertically to detect an obstacle underride, wherein the vertical distance measuring device measures only in a substantially vertical direction away from a vehicle underside (Reference is made to Figure 2);

wherein the at least one vertical distance measuring device includes at least one video sensor;

wherein the device is configured to sense pedestrians (should any pedestrians be located in the field of view of the sensor the device is configured to sense them).

Examiner notes that under the broadest reasonable interpretation in light of the specification, Farcinade discloses an apparatus meeting the limitations. The limitations are "aligned vertically" which the device of Farcinade is clearly aligned with respect to a vertical axis. Further, "measures only in a substantially vertical direction away from a vehicle underside", the apparatus of Farcinade does only measure a distance in a substantially vertical direction, since the direction of the projecting beam is not claimed but rather the direction of measuring the apparatus meets the claimed limitations. Additionally, "to detect an obstacle underride" is a functionally recited intended use limitation, as such the prior art only has to be capable of performing as such, which does not serve to further define the structure over the prior art; examiner suggests replacing the limitation with "configured to detect an obstacle underride".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farcinade in view of Andre, DE 19822184.

In regards to claims 11 and 12, Farcinade discloses all of the claimed limitations excluding the at least one distance measuring device being a transceiver of an ultrasonic, radar or video type.

Andre discloses a transceiver for measuring a distance being of a radar, ultrasonic or video type (Reference is made to Figures 1 and 2 and the abstract of the invention).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sensor of Farcinade in view of the teachings of Andre to include a transceiver, to include radar, ultrasonic or video type, so as to enable the sensor to be provided in a single module rather than a transmitter and separate receiver so as to conserve space and since transceivers are old and well known and replacing a transmitter receiver combination with a transceiver is a simple substitution which would provide the predictable result of a more compact sensor.

Allowable Subject Matter

9. Claims 14-16 and 22-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claims 18-21 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 10-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Barry J. Gooden Jr. whose telephone number is (571)272-5135. The examiner can normally be reached on Monday-Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on (571) 272-7742. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Barry J Gooden Jr.
Examiner
Art Unit 3616

/BJG/